



Serial No.: 09/777,492

Docket No.: 257/103

**THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Inventor(s) : Raul G. Barletta, N. Beth Harris.  
Serial No. : 09/759,287  
Filing Date : January 11, 2001  
Title : Identification of Virulence Determinants  
Group/Art Unit : 1645  
Examiner : Rodney P. Swartz

Confirmation No. : 9782  
Docket No. : UNL 2999.1 (801204-0011)

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Applicant Requests review of the final rejection made in the Office Action of August 1, 2006 in the above-identified application.

- No amendments are being filed with this request.
- This request is being filed concurrently with a Notice of Appeal.
- The review is requested for the reasons stated in the "Remarks" section on the attached sheets.

**Certificate of Mailing Under 37 C.F.R. 1.8**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Arlington, VA 22313-1450, on:

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**REMARKS**

In response to the Office Action dated August 1, 2006, the Examiner Interview conducted on December 12, 2006, and in conjunction with the Notice of Appeal submitted herewith, Applicant requests review of the final rejection of claims 15-42 and 54 of the above-identified application for the following reasons:

In the Office Action, under the heading "Rejections Maintained", the Examiner maintains the rejection of all claims under 35 U.S.C. § 112, second paragraph, as indefinite for differentiation of "growing" from "nongrowing". Specifically, the examiner then states that "it remains unclear how one distinguishes between the wanted and non wanted bacteria if the antimicrobial has 'reduced affect' on non-growing bacteria without some iteration of what constitutes 'reduced' affect. This reduction may be 0.1% or 100%, e.g., if the 'reduced' affect is only 0.1%, i.e., this means it results in the killing of 99.9% of non-growing bacteria. Thus, it is unclear what level of 'reduced' affect is acceptable for the instant invention."

Applicant has submitted arguments in response to the examiner's rejection, e.g., see Applicant's Amendment After Final at page 7 (mailroom date 11-7-06) in explanation of why any level of "reduced" affect is acceptable for the instant invention. Notably, in a telephonic interview with the examiner held on December 12, 2006, Applicant reiterated the arguments presented in the referenced Amendment After Final and further argued that one skilled in the art would know to use a synchronous culture of mutated bacteria if s/he wanted to effect the number of non-growing but viable bacteria.

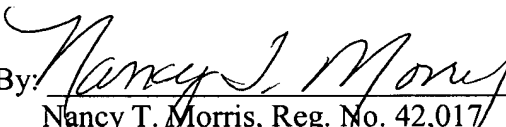
In summary, the phrase "reduced affect on" in independent claims 15, 28, 29, and 42 (and thus dependent claims 16-27, 30-41, and 54) is not indefinite. As such, the method differentiates "growing" from "nongrowing" and the examiner's rejection should be withdrawn.

In view of the foregoing remarks, it is respectfully submitted that the claims of the present application are in condition for allowance and eventual issuance. Such action is respectfully requested.

Should this Review Board have any further questions or comments that need be addressed in order to obtain allowance, it is invited to contact the undersigned attorney at the number listed below.

Acknowledgement of receipt is respectfully requested.

Respectfully submitted,

By:   
Nancy T. Morris, Reg. No. 42,017  
STINSON MORRISON HECKER LLP  
1201 Walnut Street, Suite 2900  
Kansas City, MO 64106-2150  
Telephone: (816) 842-8600  
Facsimile: (816) 691-3495